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In the SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1982

NORMAN ASHCROFT, et. al.,
Petitioners
vs.
THE UNITED STATES DEPARTMENT OF INTERIOR,
et al.,
Respondents
vs
THE UNITED STATES OF AMERICAN, et. al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH COURT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NORMAN ASHCROFT, et al.,

Petitioners,

vs. No.

THE UNITED STATES DEPARTMENT
OF THE INTERIOR, et al.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF THE APPEALS
FOR THE NINTH CIRCUIT

QUESTIONS PRESENTED FOR REVIEW

1. Whether a business which is operating on an enclave of fee patent land which existed before the creation of the reservation or was withdrawn from the reservation, which was later surrounded by the Navajo reservation and which does only an insignificant amount of business with reservation Indians, is subject to licensing and regulation under the Indian Traders Statutes, 25 U.S.C., §§ 261-264, and the Regulations promulgated pursuant to those statutes?

2. Whether fee patent land which is now surrounded by the Navajo reservation, but which was patented either before the creation of the reservation or was withdrawn from the reservation at a later date, constitutes "Indian country" within the meaning of the Indian Traders Statutes, 25 U.S.C., §§ 261-264?

PARTIES

NORMAN ASHCROFT d/b/a Querino Canyon Superette; CLYDE A. BAKER, d/b/a Baker Chevron; EVERETT EDMUNDS & WAYNE HARRIS, d/b/a Ganado Chevron; RICHARD HARRIS, d/b/a Two Story Trading Post; MRS. LESTER (ANNA) LEE; JIM McAVOY, d/b/a St. Michaels Towing; DWIGHT McGEE, d/b/a Aneth Trading Post; ARMOND ORTEGA, d/b/a Indian Ruins; FREDDY SLATTON, d/b/a Tomahawk Indian Store; BRADY SMITHSON, d/b/a Burnt Water Trading Post; HOMER THOMPSON, d/b/a Tuller Cafe; and ARTHUR KEENAN,

Plaintiffs/Appellees,

v.

THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE HONORABLE CECIL D. ANDRUS, Secretary of the Department of Interior; and THE BUREAU OF INDIAN AFFAIRS, an agency of the United States of America and a Division of the Department of Interior,

Defendants/Appellants.

ATKINSON'S LTD. OF ARIZONA, an Arizona corporation, d/b/a Gilbert Ortega's Cameron Trading Post,1

Plaintiffs/Appellees,

v.

THE UNITED STATES OF AMERICA AND THE HONORABLE CECIL D. ANDRUS, Secretary of the Interior,

Defendants/Appellants.

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1 Also doing business as and known as: Atkinson's Trading Company, Inc.; Joe Atkinson, a/k/a Edwin J. Atkinson; Atkinson's Trading Company of Arizona, Inc.; Atkinson's Ltd. of New Mexico; Atkinson's Ltd. of Arizona.

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INTRODUCTION

The Petitioners, Norman Ashcroft, doing business as Querino Canyon Superette; Armond Ortega, doing business as Indian Ruins; and Atkinson's Ltd. of Arizona, an Arizona Corporation, doing business as Gilbert Ortega's Cameron Trading Post, pray that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Ninth Circuit rendered in these proceedings on June 9, 1982, and modified on September 2, 1982 (rehearing denied).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, Norman Ashcroft, et al., v. The United States Department of the Interior, et al., ___ F.2d ___ (9th Cir. 1979) appears at Appendix A, pages 33 through 43. The opinion of the United States District Court for the District of Arizona, Norman Ashcroft, et al, v. The

United States Department of the Interior, et al., 513 F.Supp. 595 (D. Ariz. 1981), appears at Appendix B, infra, pages 43 through 58.

JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on June 9, 1982. A timely Petition for Re-hearing was denied on September 2, 1982, and a timely Motion to Stay Issuance of the Mandate pending this application for certiorari was filed on September 8, 1982. This Court's jurisdiction is invoked under Supreme Court Rule 19 and 25 U.S.C. §§ 261-64.

STATUTES, REGULATIONS AND TREATIES INVOLVED

The following statutes, regulations and treaties, because of their length, are reproduced as appendices:

1. 25 U.S.C. §§ 261-264 (Appendix E).

2. 25 C.F.R. Part 251 and 25 C.F.R. Part 252 (Appendix F).

3. Act of July 22, 1790, 1 Stat. 137 (Appendix G).

4. Act of March 30, 1802, 2 Stat. 139 (Appendix H).

5. Act of May 6, 1822, 3 Stat. 683 (Appendix I).

6. Act of June 30, 1834, 4 Stat. 729 (Appendix J).

7. Treaty with the Navajo, 15 Stat. 667 (1868) (Appendix K).

STATEMENT OF THE CASE

The facts relevant to the questions presented by this Petition are uncontroverted and therefore may be introduced to the Court in a summary fashion.

Most of the Petitioners' businesses, including Atkinson's Ltd. of Arizona (hereinafter "Atkinson's") are located on primary highways passing through the reservation. (Stip. Facts No. 6 and 7.) Atkinson's business is operated for and does almost all of its business with visitors to the Grand Canyon area and other travelers, who are traveling interstate, or who are

using the facilities of Interstate Commerce. The minimum number of sales that are made to Indians from the surrounding reservation lands are an insignificant part of Atkinson's business. (Stip. Fact No. 6.) The remaining Petitioners do a substantial part of their business with non-Indians (Stip. Fact No. 7.)

Prior to the filing of this action, the Petitioners had been notified by the Bureau of Indian Affairs (hereinafter "BIA") that they must comply with the procedures set forth in 25 C.F.R. Part 252. The stated purpose of 25 C.F.R. Part 252 is to "prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni reservations" as required by the Indian Traders Statutes, 25 U.S.C. §§ 261-264.

A business owned by one of the Petitioners had already been closed by the BIA, and the Petitioners, except Atkinson's,

alleged that the BIA had threatened to close the other businesses of the Petitioners. On March 3, 1978, the District Court issued a Temporary Restraining Order prohibiting the enforcement of 25 C.F.R. Part 252 as it applied to the other Petitioners. The parties stipulated that the Restraining Order would remain in effect until the Court ruled on the merits of the case. On May 17, 1978, Atkinson's filed an action similar to one commenced on February 23, 1978 by the other Petitioners herein who are non-Indian owners or operators of businesses situated on fee patent land surrounded by the Navajo reservation, against officials of the Department of the Interior seeking a temporary restraining order in the District Court to halt the enforcement of 25 C.F.R. Parts 251 and 252 against its business.

The District Court consolidated the action filed by Atkinson's with the action filed by the other Petitioners on June 27,

1978. Cross motions for summary judgment based on a set of Stipulated Facts were filed by the various parties in February, 1980. The District Court ordered that the motions for summary judgment be submitted on the pleadings and the Stipulated Facts, and on March 17, 1981, the Court issued a permanent injunction against the enforcement of 25 C.F.R. Part 252 against the Petitioners. The District Court held that the Petitioners' businesses were not "reservation businesses" within 25 C.F.R., § 252.3(l) and that businesses on enclaves of fee patent land within the exterior boundaries of the reservations were not <u>on</u> the reservation. The District Court found that the proper scope of the regulations promulgated under the Indian Traders Statutes was limited to businesses which were on lands subject to sovereign rights of the tribe, and that these rights extend only to tribal or trust lands, but not to fee patent property which is not on the reservation.

The United States Department of the Interior and the BIA appealed the decision of the District Court, and the United States Court of Appeals for the Ninth Circuit reversed. The Circuit Court held that businesses conducted on non-Indian fee land within the exterior boundaries of the Navajo reservation are subject to the regulations at 25 C.F.R. Parts 251 and 252 enacted pursuant to the Indian Traders Statutes. The Circuit Court held that fee land within reservation boundaries is in fact "on the reservation" and that Indian tribes retain inherent sovereign power in accordance with the authority recognized in the Indian Traders Statute Regulations even though that authority be asserted over fee patent land which was patented while outside of the exterior boundaries of the reservation, but which was subsequently made an enclave within the boundaries of the reservation. In so finding, the Circuit Court relied on language

contained in this Court's decision in Montana v. United States, 450 U.S. 544, 565 (1981). The Circuit Court concluded that the Petitioners' businesses are subject to licensing and regulation under the Indian Traders Statutes because the businesses are subject to the sovereign power of the Navajo Nation and that this power includes the power to regulate commerce among non-Indians on enclaves of fee patent land along a major highway which passes through the Indian reservation.

REASONS FOR GRANTING CERTIORARI

POINT I

THE DECISION BELOW CONFLICTS WITH THE DECISION OF THIS COURT IN MONTANA V. THE UNITED STATES.

In Montana v. The United States, 450 U.S. 544, 101 S.Ct. 1245 (1981), this Court held that an Indian tribe may not regulate the activities of non-members except in very specific circumstances. Those circumstances are: (1) where there is a specific

Congressional delegation of authority; (2) where non-Indians enter consensual relationships on the reservation with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements; or (3) where the conduct of non-Indians occurs on the reservation and threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Id. at 565-66. The latter two circumstances apply only if the conduct to be regulated occurs "on the reservation." Id.

It was uncontroverted below that no express grant of Congress delegates authority to the Navajo Nation to regulate any business which is not on their reservation. The Circuit Court cited the latter two circumstances as support for its ruling that "a tribe retains some elements of sovereignty over all land within reservation boundaries, absent the exclusive jurisdiction of another

tribe or that of the federal government (such as the establishment of a military base)." ____ F.2d ____ at ____; Appendix A. pp. 37-38. Accordingly, the Circuit Court determined that businesses operated by non-Indians on fee patent land, whose transactions are almost exclusively with non-Indian travelers to the Grand Canyon area, are subject to the sovereign power and civil authority of the Navajo Nation even though the patented land had existed before the creation of the reservation or had been withdrawn from it.

The Circuit Court assumed, almost without discussion, that the businesses of Atkinson's and the other Petitioners were located on the reservation because they were surrounded by the reservation. In making this assumption, the Circuit Court acknowledged that there can be jurisdictional enclaves in the case of other tribes or the federal government but impliedly denied that such enclaves could exist with respect to privately owned land.

(It should be noted here that the Hopi reservation is entirely surrounded by the Navajo reservation.) By this reasoning, the Circuit Court rendered the three limiting circumstances of the Montana decision meaningless because it effectively overlooked an analysis of whether the Petitioners' businesses are "on the reservation." Consequently, the Circuit Court concluded that the BIA and the United States Department of the Interior have authority to require the Petitioners to conform with regulations promulgated under the Indian Traders Statutes.

The central issue, therefore, is whether Atkinson's and the other Petitioners have their businesses located "on the reservation" or whether their land is a jurisdictional enclave which is surrounded by the reservation but not on it.

The distinction implicit in the Montana case that clarifies this issue is whether or not the fee land in question is Indian

country. Only land which is Indian country, regardless of ownership, may be deemed "on the reservation." The Circuit Court overlooked this distinction as it relates to the jurisdictional limits which the Indian Trader Statutes impose on the BIA.

The Montana case involved a suit by the United States in its own right and as fiduciary on behalf of the Crow Tribe to quiet title to the bed and banks of the Big Horn River. The United States District Court for the District of Montana declared that the State of Montana owned the bed and banks of the river. The Court of Appeals for the Ninth Circuit reversed. On Writ of Certiorari, this Court held that, inter alia, the Crow Tribe had no power to regulate non-Indian fishing and hunting on reservation land owned in fee by nonmembers of the Tribe.

In Montana, the fee land in question had been specifically designated as part of the reservation. Congress had then authorized

the issuance of patents in fee to individual Indians with the ability to alienate the land to non-Indians after holding it for twenty-five (25) years. This land clearly did not exist as fee land before the creation of the reservation and there is nothing to indicate that it was later withdrawn from the reservation. This land was still Indian country and was still part of the reservation even though it had passed to non-Indian ownership. As such it was subject to certain, limited aspects of trible jurisdiction.

With respect to the lands in the present case, however, the United States stipulated that they "either existed before the creation of the reserveration or were withdrawn from the reservation after its creation". (Stip. Fact No. 5.) This means that they are not Indian country and are not part of the reservation, as will be explained below.

Despite the obvious question of how a parcel of land can continue to be on the

reservation if it has been withdrawn from the reservation, the Circuit Court ignored this distinction and explained it away in a footnote.

> "There is no indication in the record that the tracts in question differ in any way from other non-Indian fee land within a reservation." App. A, p. 7, n. 1.

In making this statement, the Circuit Court ignored the entire line of cases developed around the concept of "Indian country". Instead, it relies on the BIA's own interpretation of its regulations which designate those businesses that it has the jurisdiction to regulate and ignores the impossibility of a regulatory agency expanding its jurisdiction beyond that which it is granted by its authorizing statute.

The courts, in interpreting the Indian Traders Statutes, have consistently maintained a distinction between the act of trading with Indians and the act of trading with Indians on an Indian reservation. See,

e.g., Warren Trading Post Company v. Arizona State Tax Commission, 380 U.S. 685 (1965); Taylor v. United States, 44 F.2d 531 (9th Cir. 1930); and Rider v. LaClair, 138 P. 3 (Wash. 1914). In Rider v. LaClair, the Washington Supreme Court states:

> ...[O]ne engaged in business of merchandising at the Two of Wapato, and who bought and sold therein, was not a trader requiring a license to trade in the Indian country. Wapato is located within the boundaries of the Yakima Indian Reservation, upon land to which Indian title has been extinguished. The extinction of Indian title seems to be the test for determining the character of land within or adjacent to an Indian reservation ....
>
> A trader or seller of merchandise upon eliminated land is not a trader within the Indian country, requiring a license [under the predecessor of the present Indian Trader Statutes]. 138 P. at 5-6.

According to the line of cases developing around this distinction, tribal sovereignty and jurisdiction continue to exist over land that is still Indian country or that is on the reservation, but does not extend to land that is not Indian country or that has never

been part of the reservation or has been excluded from the reservation.

Those cases, whether they are based on the definition contained in the predecessor of the current 25 U.S.C. § 264 or the definition contained in 18 U.S.C. § 1151, have uniformly held that fee land owned by non-Indians which existed before the reservation was created or which was later withdrawn from the reservation is not Indian country. Although the present § 264 does not define "Indian country", its predecessor, Act June 30, 1834, 162, Section 1 did contain a definition of the term. That definition can be used to determine the present meaning of the term "Indian country" because "it is an admitted rule in the interpretation of statutes that clauses which have been repealed may still be considered in construing the provisions that remain in force ...." Ex Parte Crow Dog, 109 U.S. 556, 561 (1883). Under the Act of 1834, all that part of the United

States west of the Mississippi and not within the states of Missouri and Louisiana or the territory of Arkansas was deemed "Indian country" until and unless the Indian title had been extinguished in which event the territory was no longer Indian country. See, United States v. Forty Three Gallons of Whiskey, 93 U.S. (3 Otto) 188 (1876). According to the decision of this Court [United States Supreme Court] in Bates v. Clark, 95 U.S. (5 Otto) 204 (1877), the land described in the Act of 1834:

> Was Indian country whenever Indian title had not been extinguished and it continues to be Indian country so long as Indians had title to it, and no longer. As soon as they parted with the title, it ceased to be Indian country, without any further act of Congress, unless by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable to the case. Id. at 208.

Under the definition of Indian country established in these cases, Atkinson's premises and those of the other Petitioners are not located in Indian country because Indian

title to this land was extinguished by the treaty between the United States Government and the Navajo Nation of 1868 (15 Stat. 667), which defined the extent of the Navajo reservation to be much smaller than it is today. The portion of the Navajo reservation which surrounds Atkinson's premises was added to the reservation in 1934 by the Act of June 14, 1934, Ch. 521, 48 Stat. 960-62, which redefined the extent of the Navajo Indian Reservation in Arizona and provided that "all valid rights and claims initiated under the public land laws prior to approval hereof involving any lands within the area so defined shall not be affected by this Act". Accordingly, Indian title to the land which Atkinson's occupies was extinguished by the treaty of 1868 and was not restored by the Act of 1934. The land owned by the other Petitioners has a similar history. The premises upon which Atkinson's and the other Petitioners do business, therefore, do not

constitute Indian country as that term is used in 25 U.S.C. § 264.

Even if the definition of Indian country in 18 U.S.C. § 1151 should apply to the Indian Trader Statutes (despite it being limited by its own terms to the Federal Criminal Code), the BIA would still be unable to assert jurisdiction over Atkinson's and the other Petitioners. The cases construing the definition found in the Federal Criminal Code have clearly stated that a particular piece of land is not within Indian country if it was not under Indian ownership at the time that the land surrounding it became reservation land, or, if it was later withdrawn from the reservation by congressional act, regardless of whether that land may be surrounded by reservation land. See, DeCouteau v. District County Court for Tenth Judicial District, 420 U.S. 425 (1975); Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977). This result obtains even though one

of the purposes of the broad definition of Indian country contained in 18 U.S.C. § 1151 was to avoid checkerboard jurisdiction. See, Seymour v. Superintendent, 368 U.S. 351 (1962).

According to the stipulated facts, the premises upon which Petitioners' businesses are located were excluded from the reservation or existed before the reservation and are therefore not Indian country. On the other hand, land, such as that in Montana, which became non-Indian owned fee land after the creation of the reservation and which was never withdrawn from the reservation continues to be Indian country and certain aspects of tribal jurisdiction continue, subject to the limitations set forth by this Court in Montana.

Once it is determined that the Petitioners' land is not Indian country, the error of the Circuit Court's decision is made clear. The Circuit Court agrees with the District Court that the proper scope of the

regulations is limited to businesses which are on land subject to the sovereign rights of the tribe but disagrees with the District Court that these sovereign rights extend only to tribal or trust lands. ___ F.2d at ____, n.2; Appendix A, p. 41, n.2. The Circuit Court utterly fails to decide the crucial question whether Petitioners' lands are Indian country. Absent such a determination, it is impossible to conclude that Petitioners' businesses are "on the reservation" and subject to regulations promulgated under the Indian Traders Statutes. Following the rule in Montana, the proper scope of Indian Trader regulations is limited to businesses which operate on lands subject to inherent tribal sovereignty, i.e., land which remains Indian country.

Recognition that tribal sovereignty extends no further than over Indian country land runs through all of the cases cited by the Circuit Court in support of its position. See especially, Kinnerly v. District Court,

400 U.S. 423 and Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 462 (1976).

As sole authority for its conclusion that fee patent land which is not Indian country is nevertheless "on the reservation" for purposes of the Indian Trader Statutes, the Circuit Court cites, in a footnote, 25 C.F.R. § 251.11 (_____ F.2d _____, n.2; Appendix A, p. 41, n.2). 25 C.F.R. § 251.11 provides:

> "The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land except that where the proposed licensee is the owner ... [of] the land on which the business is to be conducted, the license period shall be fixed by the Commissioner....

The Circuit Court took this to mean that non-Indian owned fee land is always within the contemplation of the regulation. Such a presumption is not required to fairly construe 25 C.F.R. § 251.11. The land referred to in this section of the regulations could be Indian country land owned by a non-Indian. The Montana case clearly

recognizes that a non-Indian might be entitled to own Indian country land in fee. It does not follow that all fee land, even within the boundaries of a reservation, is Indian country land. 25 C.F.R. § 251.11 does not expressly apply to land which is owned by non-Indians and which existed before the reservation was created or which was withdrawn from the reservation. Therefore 25 C.F.R. § 251.11 does not necessarily apply to the Petitioners' land, and the attempt of the Circuit Court to make it apply is circular.

The Circuit Court was correct to rely upon Montana v. The United States for the disposition of the appeal below. Its interpretation and application of the Montana decision, however, is incorrect since it missed the crucial distinction between the history of the land involved in Montana (which was Indian country land) and the land involved in this case (which was patented outside the reservation or withdrawn

therefrom and therefore not Indian country). From misinterpretations of this Court's ruling based on the Indian country distinction in Montana v. The United States, the Circuit Court reasoned to an incorrect and unjust conclusion in its decision below. This Court should issue a Writ of Certiorari in order to correct the conflicting opinions between this Court and the United States Court of Appeals for the Ninth Circuit, and to clarify its ruling in the Montana decision.

The Circuit Court incorrectly broadened the force and effect of Montana v. The United States to include Indian sovereignty over non-Indian business on non-Indian fee lands. This result, if left uncorrected, will lead to further extensions of civil jurisdiction under Indian sovereign powers which this Court clearly did not intend when it rendered the Montana decision. Accordingly, a Writ of Certiorari should be

issued in this case to avoid the result directed below and to preserve the correct rule of law as enunciated by this Court in Montana v. The United States.

POINT II

THE CIRCUIT COURT DECIDED AN IMPORTANT QUESTION PERTAINING TO THE INDIAN TRADERS STATUTES, 25 U.S.C., §§ 261-264, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The Indian Traders Statutes provide authority to the executive branch of the federal government to regulate trade with the Indians and also place very definite limitations upon that authority. The first Section of the Indian Traders Statutes, 25 U.S.C., § 261 provides that the Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian Tribes. Section 262 states that "any person desiring to trade with the Indians on any Indian reservation" shall be granted a license if he or she properly qualifies. Section 263 authorizes the President to prohibit trade "into the country belonging to

any Indian tribe". Section 264 establishes forfeiture of merchandise and a penalty for any person who attempts to "reside in the Indian country or any Indian reservation, as a trader or to introduce goods or to trade therein without such license." The statutes focus not merely on trade with the Indians, but trade with those Indians "on any reservation" or "in Indian country".

The critical feature in the present case, as the District Court found, is that the land upon which Petitioners operate their businesses is not part of the reservation even though that land is surrounded by Indian reservation. In order to come within the purview of the Indian Traders Statutes, a person must not only trade with Indians, but must do so on the reservation. The Circuit Court found that fee land within reservation boundaries is in fact "on the reservation" for purposes of the Indian Traders Statutes. For its reason, the Circuit Court relied upon

the language of 25 C.F.R., § 251.11, supra. The Circuit Court further noted that Part 251 applies to "[a]ny person other than an Indian of the full blood." 25 C.F.R., § 251.3. Thus, the Circuit Court concluded, "this regulation suggests the regulation's general application to non-Indian fee land within the reservation". ___ F.2d ____ at _____, n.2; Appendix A, p. 42, n.2 (9th Cir. 1982). This analysis of a regulation promulgated under the Indian Traders Statutes, explained above as being incomplete and circular, allowed the Circuit Court to determine that the Petitioners' businesses were "on the reservation" for purposes of the Statutes.

The Circuit Court's ruling, even if validly reasoned, is based upon a false premise because it conflicts with the clear meaning and purposes of the Indian Traders Statutes. The plain meaning of the Indian Traders Statutes limits the Federal government's authority to that over persons

who "trade with the Indians on any Indian reservation". The Circuit Court determined that the Petitioners' businesses were "on the reservation" because 25 C.F.R., § 251.11 contemplates that a proposed Indian trader licensee may be the owner of the land on which the licensed business is to be conducted. This reasoning does not come close to resolving the important question which was presented before the Circuit Court. A person may own land for the purpose of conducting his business and still be subject to the Indian Traders Statutes if his land has the status of Indian country. This is the person to whom 25 C.F.R. § 251.11 applies because such land would be "on the reservation" and business conducted on such land would be "reservation business" subject to tribal jurisdiction.

It does not follow, however, that all persons who own fee land surrounded by a reservation, and who do business, are in

Indian country and therefore subject to the Indian Traders Statutes or the regulations promulgated thereunder, as the Circuit Court implies. The Circuit Court's decision, if extended to its logical limits, would make the Indian Traders Statutes applicable to a wider class of persons and businesses than is intended according to the statutes' own language. It would, for example make the Indian Traders Statutes applicable to all businesses in the entire City of Gallup, New Mexico, which is surrounded by the boundaries of the Navajo Reservation, but which is comprised of land that is clearly not Indian country.

The government's actions in seeking to require the Petitioners to comply with the licensing requirements or be closed for failure to comply, exceeds the authority granted them by the Indian Traders Statutes. As the Circuit Court's decision upholds the legality of the government's action, based

upon a broadening authority in the statutes, this Court should grant a Writ of Certiorari in order to resolve the conflict between the clear meaning of the statutes and the decision rendered below.

The stipulated facts show that Atkinson's engages in an insignificant amount of business with members of the Navajo Nation. The other Petitioners' businesses involve substantial transactions with travelers going to or from state and national parks, monuments, and forests within the Four Corners region. The District Court found that such a business obviously does not fall within the ambit of the Indian Traders Statutes. The Circuit Court reversed for the reason that the Petitioners' lands are all surrounded by the reservation and brushed aside Atkinson's lack of significent trade with the Indians as irrelevant.

We do not think that it was Congress' intent in enacting the Indian Traders

Statutes that the BIA be authorized to seize the merchandise of and close a business which does almost all of its trade with non-Indians. The position of the BIA would allow it to prohibit the Petitioners from trading with other non-Indians, an activity over which neither the BIA nor the tribe even arguably has any jurisdiction.

A fair reading of the Ninth Circuit's decision would enable the Federal government, and by extension under law, the Indian tribes themselves, to assert jurisdiction under the Indian Traders Statutes over all businesses regardless of the type of trade in which they are engaged, and regardless of an absence of impact which those businesses might have on Indian affairs. The Ninth Circuit's decision, therefore, has new and far reaching effect nationwide, and this Court is the proper one to decide whether such an effect was intended by Congress in enacting the Indian Traders Statutes. The importance of

this question, never before passed upon by this Court, merits review of the Ninth Circuit's decision.

CONCLUSION

For all the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted this 8th day of October, 1982.

EAVES AND DARILNG, P.A.

By _____

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